IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8606 OF 2004

Shri Avinash Sadashiv Bhosale ..Petitioner

V/s.

Union of India & Ors. ..Respondents

Mr.K.S.Bapat i/by Umashankar Upadhyay for petitioner

Mr.D.A.Dube alongwith Y.S.Bhate i/by S.S.Sarkar for Respondent No.1.

Mr.P.U.Shinde i/by M.Dhruva & Co. for Respondent No.2.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 30.3.2005.

PC

. Heard Mr.K.S.Bapat the learned Counsel for the petitioner and Mr.P.U.Shinde the learned Counsel for Respondent No.2.

2. The facts which we briefly indicate here-in-after would show that the order of dismissal dated 19.7.2003 passed by the Disciplinary authority and the order dated 27.2.2004 passed by the appellate authority affirming the order of dismissal

do not require any interference by this Court in extra ordinary jurisdiction under Article 226 of the Constitution of India.

3. The petitioner joined as Branch manager at Vashi-Turbhe branch on 31.1.1998. Within few days of his joining as branch manager and to be precise on 18.2.1998 the petitioner as a branch manager permitted M/s.Kalgindar Construction Co.Pvt. Ltd., to open a current account bearing no.1170 at the Vashi Turbhe branch of respondent no.2-bank. For the period from 27.5.1998 to 17.6.1998 while the petitioner was the branch manager, he authorised D.D. purchases of 11 cheques aggregating Rs.5,51,51,070/- in favour of the said construction company for credit of the current account. While allowing D.D.purchases, no D.D.purchase limit to the company was fixed nor the genuineness of the transactions ascertained. The clerk who was examined in the disciplinery enquiry stated that these cheques were allowed to be handed over to the representative of the said construction Company at the behest of the petitioner. Instead of dispatching them to Bank’s branch located at the center, where the drawee bank’s were located facilitated the company to perpetrate fraud on the Bank. The petitioner as a branch manager allowed M/s.Kumar Construction Company to open a current

account on 15.6.1998. He authorised D.D.purchases of 5 high value cheques aggregating to Rs.6,22,00,900/- for credit of the current account during the period 17.6.1998 to 27.6.1998. As a result of these fraudulent transactions the respondent no.2 bank was defrauded of about Rs.12 crores. The petitioner was branch manager through out this period. In the disciplinery proceeding all these facts are clearly established. The fact that the bank was defrauded of Rs.12 crores is not even disputed by the Counsel for the petitioner. However, his contention is that the petitioner cannot be made responsible for it and moreover, in the criminal proceeding the petitioner has been acquitted honourably.

4. Needless to emphasise that the criminal proceedings and the disciplinery proceedings are quite different. The standard of proof in the two proceedings is different. In the criminal proceedings the accusation has to be proved beyond reasonable doubt whereas in the disciplinery proceedings the preponderance of probability is the standard of proof. The fact that the petitioner has been acquitted in the criminal proceeding honorably does not absolve him of the delinquency and the mis-conduct under the disciplinary rules. The petitioner was branch manager at the relevant time.

He was responsible and accountable for the affairs of the branch and he cannot escape disciplinary liability for the loss suffered by the Bank merely because he was acquitted in the criminal case.

5. The order of dismissal dated 19.7.2003 and the order passed by the appellate authority on 27.7.2004 affirming the order of the dismissal cannot be said to suffer from any legal infirmity warranting invocation of writ jurisdiction.

6. Writ petition is dismissed in limine.

(R.M.LODHA,J)

(R.S.MOHITE,J)